

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION**

SCANBUY, INC. and )  
MARSHALL FEATURE RECOGNITION, LLC, )  
 )  
Plaintiffs, ) Civil Action No. \_\_\_\_\_  
 )  
v. ) **JURY TRIAL DEMANDED**  
 )  
NEOMEDIA TECHNOLOGIES, INC., )  
 )  
Defendant. )  
 )

## COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs Scanbuy, Inc. and Marshall Feature Recognition, LLC, for their complaint against defendant NeoMedia Technologies, Inc., allege as follows:

## THE PARTIES

1. Scanbuy, Inc. (“Scanbuy”) is a New York corporation with its principal place of business at 54 West 39th Street, New York, NY 10018.
2. Marshall Feature Recognition LLC (“MFR”) is a Texas corporation with its principal place of business at 104 East Houston Street, Suite 170, Marshall, TX 75760.
3. On information and belief, NeoMedia Technologies, Inc. (“NeoMedia”) is a Delaware corporation with its principal place of business at Two Concourse Parkway, Suite 500, Atlanta, GA 30328.

## **JURISDICTION AND VENUE**

4. This Court has jurisdiction pursuant to the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*, and pursuant to 28 U.S.C. §§ 1331 and 1338.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400 because, on information and belief, NeoMedia has regularly conducted business in this judicial district and certain of the acts complained herein occurred in this judicial district.

### **FACTS**

6. On October 30, 2007, U.S. Patent No. 7,287,696 B2, entitled “System and Method for Decoding and Analyzing Barcodes Using a Mobile Device” (“the ‘696 Patent”), was duly and legally issued to inventors Olivier Attia, Prateek Shrivastava, Roman Zastepine, and Avi Chai Outmezguine. A true copy of the ‘696 Patent is attached as Exhibit A.

7. On May 3, 2005, U.S. Patent No. 6,886,750 B2, entitled “Method and Apparatus for Accessing Electronic Data Via a Familiar Printed Medium” (“the ‘750 Patent”), was duly and legally issued to inventors Spencer A. Rathus, Jeffrey S. Nevid, and Lois Fichner-Rathus. A true copy of the ‘750 Patent is attached as Exhibit B.

8. Scanbuy is the owner by assignment of the ‘696 Patent.

9. MFR is the owner by assignment of the ‘750 Patent.

10. By virtue of “An Exclusive Patent License Agreement,” Scanbuy has all substantial rights, including the right to sue for infringement and collect damages, for infringement of the ‘750 Patent in a field of use that encompasses the activities of NeoMedia alleged herein.

11. On information and belief, NeoMedia has been and is infringing, contributing to infringement, and/or inducing others to infringe the ‘696 and/or ‘750 Patents by making, using, offering for sale, selling, and/or importing “NeoReader” code scanning software (*see* [www.neom.com/115.html](http://www.neom.com/115.html)) and/or “NeoServer-OMS” (*see* [www.neom.com/177.html](http://www.neom.com/177.html)) and by its activities related to Marketing: Real People, Real Choices (*see* [www.neom.com/190.html](http://www.neom.com/190.html)), “Gulfshore Business Magazine” (*see* [www.neom.com/191.html](http://www.neom.com/191.html)), and a market test involving

Papa John's International, Inc. (see [www.neom.com/86.html?&tx\\_ttnews\[tt\\_news\]=273&tx\\_ttnews\[backPid\]=193&cHash=0a0509149a](http://www.neom.com/86.html?&tx_ttnews[tt_news]=273&tx_ttnews[backPid]=193&cHash=0a0509149a)).

12. Because some of the activities of NeoMedia and its customers alleged herein are undertaken through the supply and/or use of computer software that, to Scanbuy's knowledge, is not publicly available, Scanbuy believes that the allegations of infringement as to the '696 patent will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

13. On information and belief, NeoMedia's acts of infringement have occurred within this district and elsewhere throughout the United States.

**COUNT ONE**

14. Scanbuy and MFR repeat and re-allege the allegations of paragraphs 1 through 13 above as if fully set forth herein.

15. In violation of 35 U.S.C. § 271, NeoMedia has infringed and is continuing to infringe, literally and/or under the doctrine of equivalents, the '696 Patent by practicing one or more claims of the '696 Patent and/or by inducing or contributing to the infringement of the '696 Patent by others, and/or by supplying or causing to be supplied from the United States all or a substantial portion of the components of the patented invention and/or a component of the invention that is especially made or adapted for use in the invention and not a staple article of commerce suitable for substantial non-infringing uses.

16. Scanbuy has been damaged by NeoMedia's infringement and unless NeoMedia obtains a license to the '696 Patent from Scanbuy or is enjoined by this Court, NeoMedia will continue its infringing activity and Scanbuy will continue to be damaged.

17. NeoMedia's continuing acts of infringement are irreparably harming and causing damage to Scanbuy, and Scanbuy has no adequate remedy at law to redress NeoMedia's continuing acts of infringement.

**COUNT TWO**

18. Scanbuy and MFR repeat and re-allege the allegations of paragraphs 1 through 13 above as if fully set forth herein.

19. In violation of 35 U.S.C. § 271, NeoMedia has infringed and is continuing to infringe, literally and/or under the doctrine of equivalents, the '750 Patent by practicing one or more claims of the '750 Patent in its manufacture, use, offering for sale, sale and/or importation and/or by inducing or contributing to the infringement of the '750 Patent by others, and/or by supplying or causing to be supplied from the United States all or a substantial portion of the components of the patented invention and/or a component of the invention that is especially made or adapted for use in the invention and not a staple article of commerce suitable for substantial non-infringing uses.

20. Scanbuy and MFR have been damaged by NeoMedia's infringement and unless NeoMedia obtains a license to the '750 Patent from Scanbuy and/or MFR or is enjoined by this Court, NeoMedia will continue its infringing activity and Scanbuy and MFR will continue to be damaged.

21. NeoMedia's continuing acts of infringement are irreparably harming and causing damage to Scanbuy and MFR, and Scanbuy and MFR have no adequate remedy at law to redress NeoMedia's continuing acts of infringement.

**PRAYER FOR RELIEF**

WHEREFORE, Scanbuy and MFR pray for the following relief against NeoMedia:

1. A judgment that NeoMedia has infringed, contributorily infringed, and/or induced the infringement of the '696 Patent, and continues to infringe, contribute to the infringement of, and/or induce the infringement of the '696 Patent.

2. A judgment that NeoMedia has infringed, contributorily infringed, and/or induced the infringement of the '750 Patent, and continues to infringe, contribute to the infringement of, and/or induce the infringement of the '750 Patent.

3. A permanent injunction against NeoMedia, its officers, agents, servants, employees, attorneys, all parent and subsidiary corporations, all assignees and successors in interest, and those persons in active concert or participation with NeoMedia, including distributors and customers, enjoining them from continuing acts of infringement of the '696 and '750 Patents; in the alternative, a judgment and order that NeoMedia pay Scanbuy and/or MFR an ongoing royalty for future acts of infringement, at a rate to be determined by the jury or the Court.

4. An award of damages under 35 U.S.C. § 284 for NeoMedia's infringement of the '696 and '750 Patents, together with pre-judgment and post-judgment interest.

5. Such other relief that this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Fed. R. Civ. P. 38(b), Plaintiffs Scanbuy, Inc. and Marshall Feature Recognition, LLC demand a trial by jury of all issues and claims so triable.

DATED: November 26, 2008

By: /s/ John Mercy

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